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Supreme Court of the United States

OCTOBER TERM, 1948

No. 671

SAMUEL TITTO WILLIAMS, APPELLANT,

vs.

THE PEOPLE OF THE STATE OF NEW YORK

APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK

FILED MARCH 25, 1949.

SUPREME COURT OF THE UNITED STATES

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[fols. 1-3]

IN COUNTY COURT OF THE COUNTY OF KINGS

THE PEOPLE OF THE STATE OF NEW YORK, Plaintiffs,

against

SAMUEL TITTO WILLIAMS, Defendant.

INDICTMENT

The Grand Jury of the County of Kings, by this indictment accuse the defendant of the crime of Murder in the First Degree, committed as follows:

The defendant on or about April 20, 1947, in the County of Kings, wilfully, feloniously and of malice aforethought struck and killed Selma Graff, with an iron bar.

(Signed.) Miles F. McDonald, District Attorney.

[fol. 4] ENDORSEMENTS ON INDICTMENT

(Trial)

Tried—Part 2. Jan. 5, 6, 7, 8, 9, 12, 13, 14, 15, 16, 19, 20, 21, 22, 1948.

Judge Goldstein.

A. D. A. McCabe.

Verdict—Guilty of Murder first degree with a recommendation that defendant be imprisoned for the term of his natural life. Remanded. Jury polled.

Defendant reserves all motions.

Sept. 12, 1947.

Defendant personally appears and advised by the Court of his rights pursuant to Section 308, C. C. P. Have you a lawyer? no.

Have you money to retain a lawyer? no. Do you wish the Court to assign a lawyer? Yes.

Name of lawyer assigned—Leo Healy and Harry G. Anderson, Jesse P. Griggs.

[fol. 5] No. 1721/1947—10/302-A

THE PEOPLE

vs.

J.

SAMUEL TITTO WILLIAMS

Murder First Degree
Indictment

A True Bill

William K. Cairns, Jr., Foreman.

Miles F. McDonald, District Attorney.

Pleads Not Guilty—Sept. 12, 1947.
Bail denied—Matter of Discretion. See Sec. 553 C.C.P.
Remanded.
Judge—Samuel S. Leibowitz.
A.D.A.—Rutherford Moorehead.
Filed—Sept. 12, 1947.

[fol. 6-1119] True Name: Samuel Titto Williams.
Male:—, Color: Black.
Age: 19. Nativity: Doesn't know.
Residence: 612 Rockaway Ave. Bklyn.
Occupation: Clerk.
Mechanical Trade.
Married: No.
Read and Write: Yes.
Degree of Education: P. S. & High School.
Religion: Baptist.
Degree of Religious Instruction: Irreg.
Parents Living: Mother living.
Temperate:—
Drugs: No.
Previous Conviction: none.
Sentenced to the punishment of death during the week commencing April 4, 1948.
Judge: Louis Goldstein (4).
Date: March 2, 1948.

[fols. 1120-1138] IN COUNTY COURT OF THE COUNTY OF KINGS

Brooklyn, New York City,
January 22, 1948.

(Jurors return; trial resumed.)

THE CHARGE OF THE COURT

The Court: Mr. Foreman and gentlemen of the jury:

. . . . . .

[fol. 1159] If you find, gentlemen, that the defendant has been proven guilty of murder in the first degree beyond a reasonable doubt, then there is one other provision of the law to which your attention should be directed.

Pursuant to the Penal Law of our State, a jury finding a person guilty of felony murder may, as part of its verdict, [fols. 1160-1166] recommend that the defendant be imprisoned for the term of his natural life. Upon such recommendation, the Court may sentence a defendant to imprisonment for the term of his natural life, instead of sentencing him to electrocution. Under this section, you the jury, must determine first, whether the defendant is guilty of the crime charged; and, second, whether the sentence shall be death, or whether this Court may pronounce a sentence of life imprisonment. Both questions must be determined by you, and your answer to both questions must be contained in your verdict. Until you have agreed on every part of the verdict, you cannot render any verdict in this case. In other words, you must be unanimous before you render a verdict of guilt, and in addition thereto, as part of your verdict, if you find the defendant guilty you must reach a unanimous decision on the question as to whether or not there should be a recommendation of life imprisonment, to which I have just made reference.

You must bear in mind that if you bring in a verdict of guilty as charged, without a recommendation, it means that the Court must impose the death penalty. On the other hand, if you bring in a verdict of guilty with a recommendation of life imprisonment, it means that the Court may impose a life sentence.

You must also understand that in the event you find the defendant guilty and recommend life imprisonment, that the Court is not bound to accept your recommendation.

[fols. 1167-1168] In County Court of the County of Kings

The Verdict.

The Clerk: Gentlemen of the jury, have you agreed upon a verdict? Mr. Foreman, please rise and tell us your verdict.

The Foreman: Your Honor, by unanimous vote of this jury, we find the defendant guilty of murder in the first degree with a recommendation.

The Clerk: Hearken to your verdict as the Court records it: You say you find the defendant guilty of murder in the first degree with a recommendation that he be imprisoned for the rest of his natural life, and so say you all?

The Jury (In unison): We do.

[fol. 1169] In County Court of Kings County, Trial Term, Part II

The People of the State of New York

against

Samuel Titto Williams, Defendant

(Ind. No. 1721/1947; Murder, 1st Degree)

Transcript of Proceedings on Sentence

Brooklyn, New York City,
March 2, 1948.

Before Hon. Louis Goldstein, County Judge

Appearances:

Leo Healy, Esq., Harry G. Anderson, Esq., and Jesse P. Griggs, Esq., Attorneys at law, for the defendant.

Louis Lehman, Official Reporter.

(The defendant was arraigned on sentence.)

The Clerk (To the defendant): Have you anything to say why judgment of the law should not be pronounced against you? If you have anything to say, address yourself to the Court.

[fol. 1170] The Defendant: I did not commit that crime.

The Court: Judge Healy, I will hear you, sir.

MOTION TO SET ASIDE VERDICT AND FOR A NEW TRIAL

Mr. Healy: My memory does not serve me as to whether or not at the time the verdict was rendered in this case motions were made. I therefore at this time respectfully move to set aside the verdict and for a new trial on the ground that the verdict is contrary to law, contrary to the evidence, contrary to the weight of evidence, and on all the exceptions and objections taken during the trial, and all the grounds set forth in the Code of Criminal Procedure.

The Court: I must deny that motion.

Mr. Healy: I respectfully except.

The Court: Proceed.

ARGUMENTS OF COUNSEL

Mr. Healy: On the question of sentence, if the Court pleases, the jury in their verdict in this case recommended life imprisonment. It is not the province of counsel in this case to argue the question of law as to whether or not your Honor has a discretion to follow that recommendation or not. In our argument, we proceeded on the theory that whether or not this defendant shall be sentenced to the electric chair, or whether he shall be given life imprisonment is within the discretion of the Court. The defendant at this moment maintains his innocence. The defendant during the trial maintained his innocence. The defendant when he took the stand and submitted himself to cross-examination, also maintained his innocence. So in my brief discussion of the facts, I do so with the understanding in mind that when I mention the actions of the person who was arrested for this crime, I do not at any time admit by such argument that this defendant was the person so mentioned.

[fol. 1171] Your Honor remembers during the trial, both on the direct examination and on cross-examination, the trial which was ended was a lengthy one, that particular

emphasis was stressed, particularly in the People's case as to the manner in which this killing took place.

In our appeal for a life sentence, we ask your Honor to take into consideration that when the defendant, who committed this crime, whoever he was, went to the scene of the crime, he was not armed with a dangerous weapon. I say that, and ask your Honor to take that into consideration, because counsel respectfully believe that when the Governor of our great State asked the Legislature to have this law passed permitting the jury to recommend life imprisonment, that he indeed had in mind a case where there would be mitigating circumstances; a case, for instance, where a felony murder was committed, perhaps without premeditation and deliberation, showing a distinction between a murder case where a man leaves his home armed with a dangerous weapon, with a loaded gun, and while committing a felony kills a person.

Your Honor will remember from the facts in this case, that the person who committed this crime arrived at the Graff home unarmed, and I say that we may draw from that fact, at least a moral inference that there was not the vicious intent on the part of that person to commit a murder during a felony.

You will remember that on the People's own case, the evidence was that the person who committed that crime picked up an object right at the scene of the crime in the back yard, and that when he picked up that object, I think it [fol. 1172] is a fair inference to assume that at that moment there was no idea in the mind of that person that he would use that instrument which was picked up to kill anyone in the commission of the attempted burglary.

But on the other hand, I think the evidence in the case pointed conclusively to the fact that the instrument was used to raise one of the windows at least in the Graff home.

Your Honor will remember that the bar was placed on one window, and then on another, and taken into the house and laid upon the bed. I think it is fair to assume from all the evidence, and I do not think it can be denied that when the person, whoever he was——

The Court: What was the purpose of his taking that weapon into the house if he only used it to open the window? Why did he take it into the house after he got in there?

Mr. Healy: If your Honor will bear with me, I will come to that in a moment respectfully.

The Court: Go ahead.

Mr. Healy: The evidence shows that the bar was taken into the house. The evidence shows that the bar was laid upon a bed; that when the attempted burglary took place, and the person, whoever it was, was going through that drawer, the act committed by the person was indeed, I think your Honor must agree, one of sudden impulse.

Counsel respectfully believes that when the person was interrupted during the commission of the attempted burglary, there was no idea in his mind to kill anybody at that time. Your Honor will remember specifically, not only on cross-examination, but on direct examination, that the [fol. 1173] person had his back turned toward the little Graff girl who was in the bed at the moment: that all of a sudden within a second or two, this person, whoever he was, made a sharp, quick turn, according to the evidence, and I think it is fair to assume that there was no opportunity for the person, whoever he was, to know exactly who it was who was behind him at that time; but in making that quick turn with this bar in his hand, the bar came down on a person, not known, I am sure at that time to the person who was in that room. I ask your Honor to take that into consideration in answer to the question as to why that bar was taken into that room.

I ask your Honor to also take into consideration the other facts and circumstances, all of which were adduced at the trial and all of which have been discussed completely. I see nothing to be gained by a lengthy enumeration of them at this time, because I know your Honor, appreciating as I do the serious burden that is placed upon you this morning, has probably read this record over and over again, and is possibly far more familiar with it than counsel.

Counsel truthfully and honestly and candidly believe that this is a case, Judge Goldstein, if there ever was one in our great State of New York, where the intention of our Governor and the intention of the Legislature is certainly manifested. There must have been some reason why the Governor, in requesting that this section of the law be passed, and that the Legislature in so passing it, asked that some opportunity be given to the jury to express their opinion as to whether a life sentence should be passed or whether no recommendation should be made at all.

[fol. 1174] Twelve men of our great County of Kings, twelve men not only the ordinary type of jurors, but twelve

blue-ribbon jurors, have had an opportunity to hear this evidence which I am not going to review at this time. The jury was out a considerable length of time, and undoubtedly those twelve blue-ribbon jurors of our community must have given careful and earnest consideration to their verdict. After their deliberation, they came to the unanimous conclusion in their recommendation that this defendant be sentenced to life imprisonment. They possibly, figuratively speaking, were the judges of the law on that point.

Counsel respectfully therefore asks your Honor to accept as your own determination in this case the determination of these twelve blue-ribbon jurors, and to accept the recommendation made by them, and to sentence this defendant to life imprisonment.

The Court: Does any other counsel wish to be heard?

Mr. Griggs: There are a few remarks that I should like to make, corroborating the opinion of counsel, that your Honor should follow the recommendation of the jury. No. 1. I would like to emphasize the fact that there are several factors in this case that your Honor should consider as to anybody who committed this crime. All we have here is a confession and the re-enactment at the scene.

There is Donald, the little brother, who said that a colored man did not do it, but that a white man did it, and it was only after he had gone home and appeared on the witness stand, that he had been more or less told to recollect and to [fol. 1175] remember, to think about it again, and certainly go over the thing in his mind, my conclusion was even though there was a lot of comment made that Donald was confused, Donald took the witness stand and in his own childish and infantile manner told what he thought was there. There is reasonable doubt enough there to change this thing in my opinion from the death sentence to life imprisonment.

There is also testimony—it was a witness for the People, and not a witness for the defense, and the People are somewhat bound at least by the testimony of the person whose testimony represented the People, should not be impeached, and I think after the child had gone home, a ten-year-old child, then did he change his testimony.

Another thing is important in this case. To get back to the confession that he was supposed to have made to his girl-friend, Ah Lum, if there ever was a bum and a prostitute and a no-good girl, living in that sort of situation that she

lived in, with no obvious means of support, with this woman who admitted that she was the woman's lover, in competition with the defendant himself for the love of this Ah Lum girl, we can very well see that jealousy in the heart of this woman's lover for this defendant here, causing the competition and causing some trouble about it even on the statement that they made with respect to the confession that he made that he killed somebody at some time. Those are two other factors here.

The third factor is the way the confession was extorted. The boy had rheumatic fever, and there is even testimony on the part of some police officers that when he was arrested [fol. 1176] and taken into custody that he did not have certain marks upon his body. Even Captain Sabatino, and some of the other police officers admitted that after he was taken into custody they observed a black eye and other marks. How did he get the black eye? Anyway, you are not supposed to extort confessions by violence and intimidation.

These mitigating circumstances, your Honor, plus the fact that he re-enacted the scene, yes, but under conditions that are similar to a lynching situation, according to the defense testimony, and that the pictures and what-not, of the crowd threatening him, and the mob scenes and atmosphere, I contend in our great State of New York that we do not tolerate that sort of stuff that we have in Georgia, Mississippi, and Alabama; and thus along with Judge Healy's statement, causes me as one of the defense counsel to beg and plead with your Honor to use mercy in this situation and to follow the recommendation of twelve men who are of the most eminent businessmen and students and scholars, and some of the finest men out of the three hundred, selected all day long by counsel, and these men have recommended that, and I think your Honor should take into consideration these fact- and give this boy life-imprisonment.

Mr. Anderson: I would like to say just a few words.

The Court: Yes, Mr. Anderson.

Mr. Anderson: We will not discuss the philosophy of this law or the background by which the Legislature gave the jury the power to recommend life in a murder case. Up to that time the law was very strict in a felony murder; if any man participated, even in the slightest degree, with the

[fol. 1177] underlying felony, he might not have been on the scene of the crime, he might not have even known that the men were armed, he may not even have known that there was going to be a murder, yet if he participated in the underlying felony, under the strict construction of the law which obtained under the amendment, he would be guilty of murder in the first degree and nothing else. The Court could not find any lesser degree.

A striking illustration of that was shown in the Diamond brothers case, in which case one of the defendants, whose name I do not recall, who worked in a bank, and all that he did in that case was to telephone to the Diamond brothers the time of the messenger's leaving the bank. He never did anything else. He never was at the scene. He may have known that they were going to rob, but no intention of killing, yet under the strict law which obtained at that time he was guilty of murder in the first degree, and nothing else. So, when the Legislature came to consider the rigidity of the law so to speak, and the injustice that might result, they gave the jury the power to recommend life imprisonment.

The Court: In that case, the Diamond case, the Diamond brothers did not take part in the actual hold-up. They helped to engineer the thing.

Mr. Anderson: I am not talking about the Diamond brothers.

The Court: The same as this defendant did.

Mr. Anderson: I am now talking about a third man, whose name I cannot remember.

The Court: Yes, I know that.

Mr. Anderson: Just one word more. The Legislature [fol. 1178] did not apparently make this recommendation binding on the Court, as it is practically in every State in the Union, but while it is not binding on the Court, it seems to us that since the jury, an intelligent jury, here, and I have heard the men around the court room here say that it was one of the finest juries they have ever seen impaneled in a case—they give six hours' consideration to the case, they knew all the facts, and the case was ably summed up by Mr. Healy and the District Attorney. They knew all that, and they arrived at this conclusion unanimously that there should be a recommendation.

Now, it seems to us, even though the law does not require the Court to follow the recommendation, when a jury makes the recommendation, it should be followed, because sometimes it happens that some juror who is debating, perhaps the possibility in mind that there might be an improper verdict, that somebody might be convicted and might turn out later on to be innocent by newly discovered evidence thereon, that juror in his own conscience does not want to vote the death penalty, and so sometimes, I do not say in this case, but sometimes the recommendation is a compromise between a few jurors in the case. There is room for conflict.

I think one of the striking circumstances in the case is that this defendant had this bar and had this flashlight, and had his hand on the bar, on the tin cans, and some other things, and yet with the careful preparation of this case, yet with the most careful preparation of this case, and it was well prepared by the District Attorney, there was not only no proof of any finger-prints, but no proof of any attempt [fol. 1179] to get finger-prints. They show up on this type of object that can be wielded with a man's hand; the opening of the drawer, the taking up of a box and cans, and other things. There was no line of proof that it was not possible to obtain them. Remember, this case was very carefully prepared and thought out. You never saw a case prepared with the details as this one was. No police officer was called to tell the jury, "We could not get finger-prints in this case, because this condition could not exist or did exist." There is no proof of finger-prints. Here is a case where the finger-print evidence or the lack of it was a very controlling evidence.

Getting back to what I said in the beginning, it seems to me that your Honor should follow the recommendation of this jury. You know they made this recommendation because the law gives them the power, because of a compromise verdict, or what, we do not know, but twelve of these jurors came in here after six hours of deliberation and said, "We think this man should receive life-imprisonment." It seems to me, and I strongly urge you to follow that recommendation.

The Court: Williams, do you want to say anything?

The Defendant: I did not commit the crime, sir.

The Court: Are you ready for sentence?
Mr. Healy: We are ready for sentence.

STATEMENT OF THE COURT

The Court: The defendant, Samuel T. Williams, also known as Tito Williams, was convicted of Murder in the First Degree, with a recommendation of life imprisonment, on January 22, 1948.

Counsel have moved to set aside the verdict of the jury [fol. 1180] as against the weight of the evidence, and for other reasons urged by them. They have also requested the Court to accept the recommendation of the jury in the event the motion is denied.

The defendant is 19 years of age and has been in difficulties with law enforcement agencies since he was about 11 years of age. On September 26, 1940, while he was being cared for in a foster home of the Colored Orphan Asylum, the defendant appeared in Children's Court, Queens County, before Mr. Justice Cobb, on a charge that he and an adult had forcibly entered a building and stolen personal property valued at about $500. Investigation at that time disclosed that he had not adjusted well in the boarding homes and presented problems in school. Judgment was suspended and he was discharged to the custody of the Colored Orphan Asylum.

In November, 1946, his mother charged him with being a wayward minor, on the ground that he was wilfully disobedient, kept late hours, refused to work and was in danger of becoming morally depraved. During that period of time, when his step-father, who appears to be a hard-working, diligent citizen of our community, remonstrated with him about his conduct, he became very resentful and arguments ensued which resulted in the defendant striking and assaulting his step-father. He was served with a summons to appear in the Adolescent Court, but he did not appear. As a result, a warrant was issued for his arrest, and when apprehended he was remanded to the Raymond Street jail and arraigned in the Adolescent Court on December 2, 1946. On January 9, 1947, he was placed on probation for an indefinite term by Judge Masterson and was on probation [fol. 1181] when the crime involved here was committed.

Many material facts concerning the defendant's background could not, because of the rules of evidence, be

brought to the attention of the jury which heard the testimony involving the murder of Selma Graff.

I belive it is important to consider some of the evidence, in the light of facts brought to the attention of the Court as the result of investigation by our Probation Department, and through other sources, for the purpose of considering the jury's recommendation.

The defendant has been found guilty of striking and killing Selma Graff with an iron bar in the course of burglarizing the ground floor apartment at 143 East 96th Street, Brooklyn, N. Y., where she resided with her widowed mother and her young brother, Donald, who is nine and a half years of age. The deceased at the time of the commission of this crime was only fifteen years of age, a high school student, well-liked and attractive, and on the eve of womanhood. The evening prior to the occurrence she and some of her friends were discussing a birthday party, her mother having gone to see a show with a friend in Manhattan. Mrs. Graff's husband died in 1942 and she subsists on a small social security allowance and other income of a minor nature.

On the night involved, while Selma's girl friends were in the house, her brother Donald went to bed. After her friends left, she also went to sleep. We do not know what awakened her, except from the statements made by the defendant to the police, who said that while he was going through the bureau drawer of the dresser, he felt a light [fol. 1182] blow on the back of his neck and he swung around, brutally striking her on the head with an iron bar twenty-five inches long, one inch in thickness, and continued to rain smashing blows on her head and upper parts of her body, until she fell senseless across her bed in a pool of blood. She was removed to the Kings County Hospital, given blood transfusions and placed in an oxygen tent, but despite the efforts of the competent physicians at that institution to save her life, she remained unconscious and died eight hours later as the result of this brutal assault. Her brother, Donald, having been awakened by a shriek of his sister, with no thought other than to leave the room where this was occurring, and to avoid the scene of horror which was being enacted before him, when he was awakened from a deep sleep, was also the recipient of blows on his head from the same iron bar which cut his scalp to the bone,

and resulted in severe head injuries which required his hospitalization. The wound to his head was so deep as to expose his brain. Those few moments of brutal and ruthless assault on the part of the defendant resulted in the death of an innocent young girl, the maiming for life of a young boy, both physically and mentally, and the destruction of the hopes of a mother who had had more than her share of sorrows in the loss of her husband, and her pitiful attempts to provide a happy home for her family. There were found on the body of the deceased wounds on both of her ankles as well as contusions and a puffed up and swollen condition of her left hand. There is evidence from the deceased's brother, Donald, that when he was awakened by a shout, he saw a man bending over his sister's bed. [fol. 1183] The defendant's confessions made no mention of this, although a large pool of blood was found on the bed. The conclusion reached by the police and our probation department is to the effect that not only was the defendant attempting to burglarize the Graff home, but that he also probably attempted to ravish this young girl without success. In the light of the defendant's background and other acts on his part in the process of committing other burglaries, the Court is convinced that there is a strong possibility that such a situation existed on the night Selma Graff was murdered by the defendant, although concededly there is no direct evidence of that fact or of the consummation of his purpose.

The defendant's entrance into the Graff home was the result of experience he had had on thirty other burglaries in and about the same vicinity for a period of about two months prior to the murder of Selma Graff. He was well schooled in entering homes for the purpose of burglaries, and dispite his youth, was a veteran at this type of crime. It was only due to excellent police work coupled with force of circumstances which finally led to his apprehension. In fact, when he was apprehended, no one had any thought that he was in any way connected with the Selma Graff killing. The police were on the look-out for a "night burglar" who had committed approximately thirty burglaries in that vicinity over a period of two months. Seventy-five detectives had been assigned just for the purpose of apprehending the person or persons involved, and it was their impression, based on the manner in which each of

the burglaries had been committed, and the fact that a ground-floor apartment was involved in each instance, [fol. 1184] that in apprehending the person involved in one of these burglaries, they would in all probability have the one who had committed all of them.

Sometime during the early morning hours of September 8, 1947, as a result of information that a prowler was in the vicinity, various detectives and radio patrol cars converged toward a central point at one of the streets in Brownsville and practically ringed that area with radio patrol cars and plain-clothesmen. They arrived within two minutes after receipt of this information. Detective Cullen saw the defendant emerging from a cellar areaway and when he approached him and asked him what he had been doing there, the defendant said he had been urinating. Upon examination, no such evidence was found, and the suspicions of the police were sufficiently aroused to take the defendant into custody. He was taken to the place where he was residing and there the police officials found about eighteen pawn tickets and personal property which had been reported stolen by various individuals in that vicinity.

He was then taken to the 73rd Precinct and questioned about these burglaries. During that interval, individuals who had filed complaints with the police were brought to the Precinct and either identified some of the property which had been found in the defendant's room, or actually identified the defendant. It was only later that Detective Roger Rooney had the foresight unknown to the defendant, to place among these articles a flashlight, which had been found at the scene of the Selma Graff killing, but which the police had never publicized. The defendant, when questioned about the flashlight, admitted ownership, and as a [fol. 1185] result of this he was thereafter questioned concerning the Graff murder, and not only admitted his guilt but wrote out a confession and re-enacted the crime in detail. In those confessions and the re-enactment, he indicated that he had held up the window shade by means of a twig, another fact which though known to the police, had never been divulged to anyone. Only a person who had perpetrated this crime could have known that a twig had been used and the part it had played in the crime.

Of course, he later denied he had made these confessions

voluntarily, and that they were untrue. He denied that he had anything to do with the crime. He claimed that police brutality had forced these confessions from him and as evidence of that, exhibited certain scars on his elbow, testifying that these had been caused by blows of the butts of guns held by detectives and from cigarette burns.

It is interesting to note that the medical chart obtained from the United States Navy, which information was not permitted into evidence, discloses that at the time of defendant's discharge, which was before the date of this crime, he had a one-inch scar on the left forearm near the elbow as well as other scars. This chart would therefore indicate that the defendant had this and other scars before he even committed the instant crime, and his testimony concerning police brutality, as well as other testimony, which he glibly stated on the witness stand to be the truth was in fact made up from the whole cloth, and was merely used by him in an attempt to hoodwink the jury.

[fol. 1186] The probation report indicates that the defendant is a psychopathic liar and his personality is permeated with psychosexual habits of thought and conduct. According to the testimony of the defendant, he was a boarder of Miss Yvonne Ah Lum and only paid one week's board. The rest of the time he was kept by Mrs. Ah Lum and Miss Davenport, the woman who lived with Mrs. Ah Lum. He further stated to police that on various occasions he brought different men into the apartment for the purpose of having sexual relations with these two women.

There was information from Detective Werner that while the defendant was in the uniform of the United States Navy, he observed him using a camera at one of the public schools in the Brownsville area, to take photographs of private parts of young children.

We have the case of Rose Spector whose apartment was burglarized by the defendant on August 27, 1947, at about two a. m., and who identified one of the watches found in the defendant's room by the detectives at the time he was apprehended, as a watch that had been stolen from her apartment on that date. She says that she was awakened by someone pulling the bedsheet from under her and flashing a flashlight in her face, and when the defendant saw that she had been awakened, he ran away. The defendant stole a wristwatch and a wallet containing some money

from her apartment, and admitted this crime to the detectives. He also showed the police where he had discarded the wallet which was recovered. Miss Spector positively identified the defendant as the one in her apartment at two a. m. on August 27, 1947.

[fol. 1187] We also have the situation involving the Goldiner family who resided in the ground-floor apartment at 145 Legion Street, about two weeks before his arrest at about two a. m. At that time, their seven-year-old daughter was asleep alone in a rear room, the parents being in another room. The child says that she was awakened when she felt someone twisting her feet. She says that the lower part of her pajamas had been taken off and the defendant placed himself on top of her and placed his penis between her legs. He had one of his hands over her mouth to prevent her from making any outcry. He then arose, and as he was buttoning his pants, she made an outcry which frightened the defendant, who ran out of the apartment. The mother of the child says that she found evidence of discharge on the bed of the child. The child also positively identified the defendant as the one who perpetrated this act.

The gross proceeds of the many burglaries committed by the defendant total approximately $5,000. In his room at 122 Sutter Avenue, stolen property was found, as I have indicated before, including fifteen ladies' and men's rings, three ladies' wrist-watches, one man's wrist-watch, about eighteen pawn tickets, three coin banks, which had been forced open, pornographic pictures, and a large hunting knife. Some of the pawn tickets were in the defendant's name and others were in the name of one, Alberta Davenport, who lived at the same premises and who said that the defendant had given her the property to pawn. The defendant claimed that all of the stolen property found in his room was either won by him in crap games or bought by him from different men unknown to him, for various sums of money.

[fol. 1188] There is no point in continuing any further into the defendant's background and experience as a full-time burglar. He perfected what he thought was a foolproof method of earning a living in an easy way. Like others of his kind, however, he finally found himself in a situation, not to his liking, and decided to destroy whatever was in his way to a continued success in the criminal career chosen by him. It is unfortunate that his path was

blocked by this young girl who showed such bravery, in the protection of her life. There was no reason for the wanton destruction of the life of this young girl.

The defendant had picked up the iron bar in the vicinity of the Graff home and had used it to pry open the window to enter the apartment and had laid it on the bed of the first bedroom which he entered. When he found nothing there, he took the bar along with him into the next room, and it was with the use of this bar that he snuffed out the life of this young and innocent girl in a cruel and reckless manner.

The apprehension of the defendant and his subsequent conviction was the result of excellent and intelligent police work coupled with fine cooperation on the part of the District Attorney's office of Kings County, Detective Rooney of the 73rd Squad, and Detectives Cullen and Werner of the 71st Squad, as well as Patrolman DeVivo and DiLorenzo, deserve special commendation for their efforts in bringing this defendant to justice. At the same time, credit must be given to Assistant District Attorney Perlman who investigated the matter with refreshing ingenuity and skill, as well as to Assistant District Attorney McCabe who prepared and tried this case in an able, fair, and vigorous manner.

[fol. 1189] The defendant, when he testified, showed himself to be a glib, slick, calculating type of individual. His ideas, as revealed by our probation report, revolve around a morbid sexuality, and he is emotionally unstable, unconcerned and suffers from no remorse whatsoever. He is deemed by our probation department to be a menace to society.

It is unfortunate in a trial in this nature that the jury, once it has decided upon a verdict of guilty of murder in the first degree, is not permitted to receive other evidence, which although not permissible as legal evidence in the trial itself, could be used by it in determining whether or not it would recommend life imprisonment. The Court is convinced that the defendant's glibness did help him to the extent of obtaining a recommendation from the jury, and had they been fully cognizant of all the facts, there would have been no such recommendation.

I have given this matter grave and serious consideration and have searched for any facts which would justify the acceptance of the jury's recommendation. My purpose in revealing the defendant's background was to indicate some of the facts which the Court has taken into consideration, in

weighing the recommendation of the jury. I regret that I found nothing in his favor and my conscience would not permit me to give him any consideration of this nature. The record of the defendant stamps him as a dangerous criminal and I find no basis whatsoever on which I can extend to him, in good conscience, the consideration which the jury has recommended. To adopt such a recommendation would be tantamount to a challenge to law and order in our community.

[fol. 1190] The People of the State should not be burdened with the responsibility of taking care of this defendant for the remainder of his natural life, and he deserves no merciful consideration by the Court. He must pay the extreme penalty for his brutal murder of an innocent young girl and the injuries he inflicted upon her young brother. The grief which the defendant's act brought, not only upon the family of the deceased, but upon his own family, is appalling beyond description.

Whether or not a Court should follow the recommendation of a jury in a case of this kind is by no means an easy matter to determine. There are many factors that enter into the resolution of the problem thus presented. I have given everyone of those factors its proper weight and due consideration, and it is only after such careful weighing and deliberation that I have come to the conclusion that this is an instance in which the best interests of society would not be served by following the recommendation of the jury. If, indeed, this defendant is, in the language of our Probation Department, a "menace" to our society, and I believe that he is such a menace, it is the duty of the Court to consider the recommendation of the jury in the light of that fact and the various other facts brought to the attention of the Court for the first time. Many of these facts—indeed the greater portion of them—while extremely relevant on this question, were not relevant to the issue tried before the jury. For that reason, undoubtedly, the jury made the recommendation that it did. I am fully convinced, however, that if this jury had before it the facts contained in the probation report, the recommendation would never have [fols. 1191-1197] been made. It would stultify my conscience to adopt the recommendation under such circumstances. It is not without hesitation that I have reached this conclusion,

but having reached it, I am now convinced of its absolute justice and inevitability.

I must therefore deny the motion to set aside the verdict and to refuse to accept the recommendation of the jury for life imprisonment as embodied in its verdict.

SENTENCE

It is therefore ordered and adjudged by the court that you, Samuel Tito Williams, for the murder in the first degree of Selma Graff, whereof you were convicted, be and you are hereby sentenced to the punishment of death, and that within ten days from this day, the Department of Correction of the City of New York, deliver you, said Samuel Tito Williams, together with the warrant of this court to the agent and warden of Sing Sing State Prison at Ossining, where you shall be kept in solitary confinement until the week beginning with Sunday, April 4, 1948, and that upon some day within the week so appointed, the agent and warden of the said Sing Sing State Prison at Ossining, shall do execution upon you, Samuel Tito Williams, in the mode and manner prescribed by law, and may God have mercy upon your soul.

[fol. 1198] IN COURT OF APPEALS OF NEW YORK

Pleas in the Court of Appeals, held at the Court of Appeals Hall, in the City of Albany, on the 6th day of January in the year of our Lord one thousand nine hundred and forty-nine, before the Judges of said Court.

Witness, The Hon. John T. Loughran, Chief Judge, Presiding. John Ludden, Clerk.

REMMITTITUR—January 7, 1949

THE PEOPLE OF THE STATE OF NEW YORK, Respondent,

against

SAMUEL TITTO WILLIAMS, Appellant

Be it remembered, that on the 20th day of September in the year of our Lord one thousand nine hundred and forty-eight, Samuel Titto Williams, the appellant in this action, came here unto the Court of Appeals, by Edward

H. Levine and Jesse P. Griggs, his attorneys, and filed in the said Court a Notice of Appeal and return thereto from the judgment of conviction of the County Court, Kings County, and the People of The State of New York, the respondent in said action, afterward appeared in said Court of Appeals by Miles F. McDonald, District Attorney. Which said Notice of Appeal and the return thereto, filed as aforesaid, are hereunto annexed.

Whereupon, the said Court of Appeals having heard this cause argued by Mr. Edward H. Levine of counsel for the [fol. 1199] appellant, and by Mr. Solomon A. Klein of counsel for the respondent, brief filed by amicus curiae, and after due deliberation had thereon, did order and adjudge that the judgment of conviction of the County Court, Kings County, appealed from in this action be and is hereby in all things affirmed.

Upon this appeal there was presented and necessarily passed upon a question under the Constitution of the United States, viz: The defendant argued that his conviction violated the Fourteenth Amendment of the Constitution of the United States in that the sentence of death was based upon information supplied by witnesses with whom the accused had not been confronted and as to whom he had no opportunity for cross-examination or rebuttal; this Court held that the sentence aforesaid did not violate the Fourteenth Amendment of the Constitution of the United States.

And thereafter, on February 22, 1949, the Court, having requested the return of its remittitur for amendment, did order and adjudge that the remittitur be amended, as of January 6, 1949, to read as follows:

Judgement of conviction of the County Court, Kings County, appealed from in this action be and is hereby in all things affirmed.

Upon this appeal there was presented and necessarily passed upon a question under the Constitution of the United States, viz: The defendant argued that, as construed, Sections 1044, 1045, and 1045A of the Penal Law and Section 482 of the Code of Criminal Procedure of this state violate the Fourteenth Amendment of the Constitution of the United States in that they sanctioned or permitted the sentence of death to be based upon information supplied by persons with whom the accused had not been confronted

and as to whom he had no opportunity for cross-examination or rebuttal; this court held that neither the statutes nor the sentence aforesaid violated the Fourteenth Amendment of the Constitution of the United States.

[fol. 1200] Loughran, Chief Judge, Desmond, Dye and Fuld, JJ. concur in the granting of this amendment. Lewis and Conway, JJ. dissent as to said amendment of the remittitur.

And it was also further ordered, that the record aforesaid, and the proceedings thereon in this Court, be remitted to the said County Court.

Therefore, it is considered that the said original judgment of conviction be and is hereby in all things AFFIRMED etc. as aforesaid, and stand in full force, strength and effect.

And hereupon, as well the Notice of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises, are by the said Court of Appeals remitted into the County Court, Kings County, before the Judges thereof, according to the form of the statute in such case made and provided.

John Ludden, Clerk of the Court of Appeals of the State of New York.

Court of Appeals, Clerk's Office

Albany, January 7, 1949.

I hereby certify, that the preceding record contains a correct transcript of the proceedings in said cause in the Court of Appeals, with the papers originally filed therein, attached thereto.

John Ludden, Clerk. (Seal.)

[fol. 1201] SUPREME COURT OF THE UNITED STATES

No. ———, October Term, 1948

SAMUEL TITTO WILLIAMS, Appellant,

v.

THE PEOPLE OF THE STATE OF NEW YORK

ORDER ALLOWING APPEAL

The appellant in the above-entitled cause, having prayed for the allowance of an appeal to the Supreme Court of the United States from the judgment made and entered therein by the Court of Appeals of the State of New York on the 6th day of January, 1949, and having presented his petition for appeal, assignment of errors, prayer for reversal, and statement as to jurisdiction, pursuant to the Rules of the Supreme Court of the United States in such case made and provided;

It Is Now Here Ordered that an appeal be, and the same is hereby, allowed to the Supreme Court of the United States from the Court of Appeals of the State of New York in the above-entitled cause, as provided by law, and it is further ordered that the Clerk of the County Court, Kings County, State of New York, shall prepare and certify a transcript of the record, proceedings and judgment in this cause and transmit the same to the Supreme Court of the United States, so that he shall have the same in said court within forty days of this date, or within such time as may be specified by a further order of this Court.

Dated this 23rd day of February, 1949.

Wiley Rutledge, Associate Justice of the Supreme Court of the United States.

[fol. 1202] SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS UPON WHICH APPELLANT INTENDS TO RELY AND DESIGNATION OF PARTS OF THE RECORD TO BE PRINTED ON APPEAL AS NECESSARY FOR THE CONSIDERATION OF SUCH POINTS—Filed March 25, 1949

To Charles Elmore Cropley, Esq.,
Clerk of the Supreme Court of the United States:

In accordance with Rule 13 (9) of the Revised Rules of the Supreme Court of the United States the following is a statement of the points upon which appellant intends to rely upon his appeal herein:

(1) The Court of Appeals of the State of New York erred in its decision that certain statutes of the State of New York, to wit, Sections 1044, 1045 and 1045-a of the Penal Laws of the State of New York, and Section 482 of the Code of Criminal Procedure of the State of New York, are valid and are not repugnant to the 14th Amendment to the Constitution of the United States, when construed by said Court, in its judgment appealed from, so as to permit the Trial Judge to disregard the recommendation of a life sentence by the jury before whom appellant was tried and convicted of felony-murder in the first degree, and to sentence appellant to death, based on the evidence of witnesses with whom appellant had not been confronted and as to [fol. 1203] whom appellant had been afforded no opportunity for cross-examination or rebuttal.

(2) The said Court of Appeals erred in failing to decide that such statutes are invalid and repugnant to the 14th Amendment to the Constitution of the United States, unless construed to limit the right of a Trial Judge to disregard the jury's recommendation of a life sentence and to sentence an accused to death, either on the basis of evidence already of record at the time of the jury's verdict, or if on the basis of evidence subsequent to the jury's verdict, only where the accused is confronted before the Trial Judge with witnesses giving such evidence and is afforded opportunity for cross-examination and rebuttal.

(3) The said Court of Appeals erred in affirming the judgment of conviction and sentence to death of appellant in the County Court of Kings County based on the fore-

going construction by said Court of Appeals of such statutes of the State of New York, and in its decision that so construed such statutes are valid and are not repugnant to the 14th Amendment of the Constitution of the United States.

Likewise, in accordance with said Rule 13 (9), appellant hereby designates as the parts of the record which he thinks necessary for the consideration of the foregoing points, those parts of the record specified in the attached stipulation by the parties hereto, designating portions of the record to be printed on appeal, which stipulation is made a part hereof.

Dated: March 23, 1949.

John F. Finerty, Attorney for Appellant-Defendant.

[fol. 1204] Service of the foregoing Statement of Points Upon Which Appellant Intends to Rely, together with the foregoing Designation of Parts of the Record To Be Printed On Appeal As Necessary For The Consideration Of Such Points, and Stipulation of Parties therein referred to, is hereby acknowledged.

March 23, 1949.

Miles F. McDonald, Attorney for Appellees-Plaintiffs.

[fol. 1205] Supreme Court of the United States

Stipulation by Parties Designating Portions of the Record to Be Printed on Appeal—Filed March 25, 1949

It is hereby stipulated by and between the undersigned counsel for the respective parties that the following portions of the Record on Appeal presented to the Court of Appeals of the State of New York be printed as necessary for the consideration of the appeal to the Supreme Court of the United States:

1. The indictment and the endorsements thereon appearing at folios 8 to 18 inclusive in Volume I. of the printed Case on Appeal submitted to the Court of Appeals of the State of New York, as shown at pages 3-6 of transcript of record on this appeal.

2. That portion of the trial court's charge to the jury appearing at folios 3477 to 3480 in the aforesaid

printed Case on Appeal, as shown at pages 1159-1160 of transcript of record on this appeal, reading as follows:

[fol. 1206] "If you find, gentlemen, that the defendant has been proven guilty of murder in the first degree beyond a reasonable doubt, then there is one other provision of the law to which your attention should be directed.

"Pursuant to the Penal Law of our State, a jury finding a person guilty of felony murder may, as part of its verdict, recommend that the defendant be imprisoned for the term of his natural life.

"Upon such recommendation, the Court may sentence a defendant to imprisonment for the term of his natural life, instead of sentencing him to electrocution. Under this section, you the jury, must determine first, whether the defendant is guilty of the crime charged; and, second, whether the sentence shall be death, or whether this Court may pronounce a sentence of life imprisonment. Both questions must be determined by you, and your answer to both questions must be contained in your verdict. Until you have agreed on every part of the verdict, you cannot render any verdict in this case. In other words, you must be unanimous before you render a verdict of guilt, and in addition thereto, as part of your verdict, if you find the defendant guilty you must reach a unanimous decision on the question as to whether or not there should be a recommendation of life imprisonment, to which I have just made reference.

"You must bear in mind that if you bring in a verdict of guilty as charged, without a recommendation, it means that the Court may impose a life sentence.

"You must also understand that in the event you find the defendant guilty and recommend life imprisonment, that the Court is not bound to accept your recommendation."

3. The verdict of the jury appearing at folios 3499 to 3500 inclusive in the aforesaid printed Case on [fol. 1207] Appeal, as shown at page 1167 of transcript of record on this appeal.

4. Proceedings on Sentence, appearing at folios *3505 to 3573* inclusive in the aforesaid printed Case on

Appeal, as shown pages 1169-1191 of transcript of record on this appeal.

5. The amended remittitur of the Court of Appeals of the State of New York, affirming the judgment of conviction of the County Court of Kings County and the sentence of death thereunder, as shown pages 1198-1200 of transcript of record on this appeal.

Dated: March 23, 1949.

John F. Finerty, Attorney for Appellant-Defendant,
Miles F. McDonald, District Attorney of Kings County, Attorney for Appellees-Plaintiffs.

[fol. 1208] SUPREME COURT OF THE UNITED STATES

No. 671

October Term, 1948

ORDER NOTING PROBABLE JURISDICTION—March 28, 1949

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is assigned for argument during the week of April 18th.